

REMARKS

The claims are drawn to a medical device that provides a solution to a fundamental problem in tissue biopsy procurement. The minimally invasive instrument is characterized by a configuration of sampling devices, which are disposed longitudinally at spatially distinct locations along the length of the instrument thereby allowing both collection of multiple samples and spatial mapping of the interrogated tissue.

Applicants thank the Examiner for the helpful discussion regarding claim amendments in the telephone interview of April 19, 2007. The claims have been amended in accordance with the Examiner's suggestions to more clearly define the invention.

No new matter has been added by this amendment.

35 U.S.C. 102(b)

The rejection of claims 1-4 and 8-10 for anticipation by U.S. Patent No. 5,415,182 (Chin) was maintained. The claims have been amended to more clearly define the distinctions of the present invention over Chin. Specifically, the claims require each of several sample devices to be located in a different position along the length or longitudinal axis of the instrument. The sampling devices or biopsy needles in Chin's instrument are all located at one terminus, i.e., the distal end, of the instrument. Chin does not describe sampling devices positioned at different locations along the length of the instrument. In view of this key distinction, Applicant submits that claims 1-4 and 8-10 are novel over Chin and requests withdrawal of this rejection.

35 U.S.C. 103

Claims 5-6 and 12 were rejected for obviousness over Chin in view of Burbank. Both claims 5 and 6 depend indirectly from Claim 1. Claim 5 depends is drawn to a device with an interior lumen containing a deployment control element that emits an electrical, optical, pneumatic, hydraulic, RF-transmitted, inductive, magnetic, thermal or sonic signal. Claim 6 is drawn to a device in which the housing is solid and the deployment control elements are located on the exterior of the housing. Burbank was cited for description of an RF-transmitted signal and for vacuum tissue sampling. As is discussed above, the claims have been amended to distinguish the claimed invention over Chin. Burbank fails to describe the basic features of the invention that are absent in Chin; therefore, the claims are non-obvious over this combination of references.

Claim 7 was rejected for obviousness over Chin in view of Levin. Claim 7 requires the instrument of claim 1 to have a heating element and heat conductive cover. While Levin describes a heat generator to cauterize tissue, it neither describes nor suggests critical elements of the device as required by amended claim 1. Thus, the rejection of claim 7 should be withdrawn.

Claim 16 which requires the volume of an isolated chamber to have a volume of 0.001 to 1 cubic millimeter was rejected under 35 U.S.C. 103(a) as being unpatentable over Chin in view of Megahed. Neither of these references describes the fundamental design elements of the instrument of claim 1, and neither reference discloses or suggests the volume required by this claim. Therefore, a prima facie case for obviousness has not been established.

Claims 17-19 were rejected for obviousness over Chin in view of Burbank, and further in view of Levin. Claim 17 has been amended to require that each of the sampling devices of the instrument is located in a different position along the length of the housing. As is discussed above, neither Chin, nor Burbank, nor Levin describe or suggest such a configuration. Therefore, this rejection cannot stand.

Claims 22-23 are also method claims that require the use of the instrument of claim 1. and further require the use of differential pressure to collect or reject tissue samples. These claims were subject to an obviousness rejection based on Levin in view of Burbank. Since neither Burbank nor Levin describe a plurality of sampling devices each of which is located in a different position along the length of a tissue removal device, these claims are also non-obvious over the cited prior art.

Claim 26 is drawn to a method of using the instrument of claim 1 to extract multiple tissue samples and further requires imaging a tissue location fiber-optically. The claim was rejected for obviousness over Levin in view of Larose. The Levin reference was discussed; Levin fails to describe the key element of the instrument of claim 1. Larose discloses a surgical punch with a movable jaw and an optional fiber-optic device to provide an image of the surgery site in a video monitor. Larose fails to overcome the deficiencies of Levin. The method of claim 26 is therefore non-obvious over Levin in view of Larose.

CONCLUSION

Applicant believes the amended claims are in condition for allowance, which action is respectfully requested. Applicant reserves the right to prosecute claims which are equal to or broader in scope in this or future applications related to the above-identified patent application.

Should the Examiner have any questions concerning the enclosure submitted herewith, the Examiner is invited to telephone the undersigned agent of record at the number provided.

The Commissioner is hereby authorized to charge any fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-0311 (Reference No. 26859-002).

Respectfully submitted,



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